

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 16, 2013

SENATE BILL

No. 129

Introduced by Senator Wright
(Coauthor: Assembly Member Gomez)

January 23, 2013

An act to amend Section 2881 of, *and to repeal Section 278.5 of*, the Public Utilities Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 129, as amended, Wright. Deaf and disabled telecommunications program.

~~Under~~

(1) *Under* existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law requires the commission to oversee administration of the state's telecommunications universal service programs, including the deaf and disabled programs, which are funded through the Deaf and Disabled Telecommunications Program Administrative Committee Fund. Existing law, until January 1, 2014, requires the commission to establish a surcharge, not to exceed 0.5%, that is uniformly applied to a subscriber's intrastate telephone service charges to allow providers of the equipment and service provided pursuant to the deaf and disabled programs to recover their costs. Existing law, until January 1, 2016, requires the commission to submit a report on the fiscal status of the programs to the Legislature on or before December 31 of each year. Existing law requires the report to

include, among other things, an evaluation of options for controlling program expenses and program efficiency, as specified.

This bill would extend imposition of the surcharge until January 1, 2020. The bill would extend the reporting requirements until January 1, 2021, and *would require the commission to submit the report to the Legislature on or before March 1 of each year. This bill would also require the report to include an evaluation of any modification to the program that would maximize participation and funding opportunities under similar federal programs. As part of the report that is due no later than March 1, 2014, this bill would require the commission to evaluate options for controlling the program costs of providing speech generating devices, and include any information on barriers to participation by eligible subscribers.*

(2) *Existing law requires the commission to design and implement a program to provide access to a speech-generating telecommunications device to any subscriber who is certified as having a speech disability at no charge additional to the basic exchange rate. Existing law also requires the commission to expand the deaf and disabled program to include assistance to individuals with speech disabilities, including assistance in purchasing speech-generating devices, accessories, and mounting systems, and specialized telecommunications equipment.*

This bill would delete the provisions requiring the commission to expand the program to include assistance to individuals with speech disabilities, including assistance in purchasing speech-generating devices, accessories, and mounting systems, and specialized telecommunications equipment.

(3) *Existing law states the intent of the Legislature that existing members of the Deaf and Disabled Telecommunications Program Administrative Committee should serve out their current terms of office as members of the committee, but not to exceed July 1, 2003. Existing law requires the committee to develop and submit, not later than October 1, 2002, recommendations to the commission for administration and governance of the deaf and disabled programs, as prescribed.*

The bill would repeal these provisions.

~~Under~~

(4) *Under the Public Utilities Act, a violation of any order, decision, rule, direction, demand, or requirement of the commission by a public utility is a crime.*

Because the bill would require an order or decision of the commission to extend the surcharge funding the deaf and disabled programs and

because a violation of these requirements would be a crime, the bill would impose a state-mandated local program by expanding the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 278.5 of the Public Utilities Code is
2 repealed.
3 ~~278.5.—(a) It is the intent of the Legislature that existing~~
4 ~~members of the Deaf and Disabled Telecommunications Program~~
5 ~~Administrative Committee should serve out their current terms of~~
6 ~~office as members of the committee, but not to exceed July 1,~~
7 ~~2003.~~
8 ~~(b) The Deaf and Disabled Telecommunications Program~~
9 ~~Administrative Committee shall develop and submit, not later than~~
10 ~~October 1, 2002, recommendations to the commission for the~~
11 ~~administration and governance of the programs described in~~
12 ~~Sections 2881, 2881.1, and 2881.2, including recommendations~~
13 ~~for the establishment of a designated office and program function,~~
14 ~~within state government, staffed in a manner designed to provide~~
15 ~~expert oversight and governance to ensure the long-term quality~~
16 ~~and integrity of programs and services offered through the Deaf~~
17 ~~and Disabled Telecommunications Program.~~
18 SECTION 1.
19 SEC. 2. Section 2881 of the Public Utilities Code is amended
20 to read:
21 2881. (a) The commission shall design and implement a
22 program to provide a telecommunications device capable of serving
23 the needs of individuals who are deaf or hearing impaired, together
24 with a single party line, at no charge additional to the basic
25 exchange rate, to a subscriber who is certified as an individual

1 who is deaf or hearing impaired by a licensed physician and
2 surgeon, audiologist, or a qualified state or federal agency, as
3 determined by the commission, and to a subscriber that is an
4 organization representing individuals who are deaf or hearing
5 impaired, as determined and specified by the commission pursuant
6 to subdivision (h). A licensed hearing aid dispenser may certify
7 the need of an individual to participate in the program if that
8 individual has been previously fitted with an amplified device by
9 the dispenser and the dispenser has the individual's hearing records
10 on file prior to certification. In addition, a physician assistant may
11 certify the needs of an individual who has been diagnosed by a
12 physician and surgeon as being deaf or hearing impaired to
13 participate in the program after reviewing the medical records or
14 copies of the medical records containing that diagnosis.

15 (b) The commission shall also design and implement a program
16 to provide a dual-party relay system, using third-party intervention
17 to connect individuals who are deaf or hearing impaired and offices
18 of organizations representing individuals who are deaf or hearing
19 impaired, as determined and specified by the commission pursuant
20 to subdivision (h), with persons of normal hearing by way of
21 intercommunications devices for individuals who are deaf or
22 hearing impaired and the telephone system, making available
23 reasonable access of all phases of public telephone service to
24 telephone subscribers who are deaf or hearing impaired. In order
25 to make a dual-party relay system that will meet the requirements
26 of individuals who are deaf or hearing impaired available at a
27 reasonable cost, the commission shall initiate an investigation,
28 conduct public hearings to determine the most cost-effective
29 method of providing dual-party relay service to the deaf or hearing
30 impaired when using a telecommunications device, and solicit the
31 advice, counsel, and physical assistance of statewide nonprofit
32 consumer organizations of the deaf, during the development and
33 implementation of the system. The commission shall apply for
34 certification of this program under rules adopted by the Federal
35 Communications Commission pursuant to Section 401 of the
36 federal Americans with Disabilities Act of 1990 (Public Law
37 101-336).

38 (c) The commission shall also design and implement a program
39 whereby specialized or supplemental telephone communications
40 equipment may be provided to subscribers who are certified to be

1 disabled at no charge additional to the basic exchange rate. The
2 certification, including a statement of visual or medical need for
3 specialized telecommunications equipment, shall be provided by
4 a licensed optometrist, physician and surgeon, or physician
5 assistant, acting within the scope of practice of his or her license,
6 or by a qualified state or federal agency as determined by the
7 commission. The commission shall, in this connection, study the
8 feasibility of, and implement, if determined to be feasible, personal
9 income criteria, in addition to the certification of disability, for
10 determining a subscriber's eligibility under this subdivision.

11 (d) (1) The commission shall also design and implement a
12 program to provide access to a speech-generating device to any
13 subscriber who is certified as having a speech disability at no
14 charge additional to the basic exchange rate. The certification shall
15 be provided by a licensed physician, licensed speech-language
16 pathologist, or qualified state or federal agency. The commission
17 shall provide to a certified subscriber access to a speech-generating
18 device that is all of the following:

19 (A) A telecommunications device or a device that includes a
20 telecommunications component.

21 (B) Appropriate to meet the subscriber's needs for access to,
22 and use of, the telephone network, based on the recommendation
23 of a licensed speech-language pathologist.

24 (C) Consistent with the quality of speech-generating devices
25 available for purchase in the state.

26 (2) The commission shall adopt rules to implement this
27 subdivision and subdivision (e) by January 1, 2014.

28 (e) All of the following apply to any device or equipment
29 described in this section that is classified as durable medical
30 equipment under guidelines established by the United States
31 Department of Health and Human Services:

32 (1) It is the intent of the Legislature that the commission be the
33 provider of last resort and that eligible subscribers first obtain
34 coverage from any available public or private insurance.

35 (2) The commission may require the subscriber to provide
36 information about coverage for any or all of the cost of the device
37 or equipment that is available from any public or private insurance,
38 the cost to the subscriber of any deductible, copayment, or other
39 relevant expense, and any related benefit cap information.

1 (3) The total cost of any device or equipment provided to a
2 subscriber under this section shall not exceed the rate of
3 reimbursement provided by Medi-Cal for that device or equipment.

4 (f) Nothing in this section requires the commission to provide
5 training to a subscriber on the use of a speech-generating device.

6 (g) The commission shall establish a rate recovery mechanism
7 through a surcharge not to exceed one-half of 1 percent uniformly
8 applied to a subscriber's intrastate telephone service, other than
9 one-way radio paging service and universal telephone service,
10 both within a service area and between service areas, to allow
11 providers of the equipment and service specified in subdivisions
12 (a), (b), *and* (c), ~~and (i)~~, to recover costs as they are incurred under
13 this section. The surcharge shall be in effect until January 1, 2020.
14 The commission shall require that the programs implemented under
15 this section be identified on subscribers' bills, and shall establish
16 a fund and require separate accounting for each of the programs
17 implemented under this section.

18 (h) The commission shall determine and specify those statewide
19 organizations representing the deaf or hearing impaired that shall
20 receive a telecommunications device pursuant to subdivision (a)
21 or a dual-party relay system pursuant to subdivision (b), or both,
22 and in which offices the equipment shall be installed in the case
23 of an organization having more than one office.

24 ~~(i) (1) The commission shall expand the program created by
25 this section to include assistance to individuals with speech
26 disabilities that impair the individual's access to, and use of, the
27 telephone network. The commission shall ensure that
28 speech-generating devices, accessories, and mounting systems,
29 and specialized telecommunications equipment, including infrared
30 telephones, speaker phones, and telephone interface devices, are
31 funded through the program.~~

32 ~~(2) The commission shall ensure that only individuals who are
33 both residents of the state and speech impaired as certified by a
34 licensed physician, licensed speech-language pathologist, or
35 qualified state or federal agency are eligible.~~

36 ~~(3) The commission shall provide to each eligible applicant the
37 appropriate equipment consistent with the recommendation of a
38 licensed speech-language pathologist.~~

39 ~~(4) The commission shall ensure that the equipment provided
40 pursuant to this subdivision is consistent with the economy,~~

1 efficiency, and quality of equipment that is available for purchase
2 in the state.

3 ~~(j)~~

4 (i) The commission may direct a telephone corporation subject
5 to its jurisdiction to comply with its determinations and
6 specifications pursuant to this section.

7 ~~(k)~~

8 (j) The commission shall annually review the surcharge level
9 and the balances in the funds established pursuant to subdivision
10 (g). Until January 1, 2020, the commission may make, within the
11 limits set by subdivision (g), any necessary adjustments to the
12 surcharge to ensure that the programs supported thereby are
13 adequately funded and that the fund balances are not excessive. A
14 fund balance that is projected to exceed six months' worth of
15 projected expenses at the end of the fiscal year is excessive.

16 ~~(l)~~

17 (k) The commission shall prepare and submit to the Legislature,
18 on or before ~~December 31~~ *March 1* of each year, a report on the
19 fiscal status of the programs established and funded pursuant to
20 this section and Sections 2881.1 and 2881.2. The report shall
21 include a statement of the surcharge level established pursuant to
22 subdivision (g) and revenues produced by the surcharge, an
23 accounting of program expenses, and an evaluation of options for
24 controlling those expenses and increasing program efficiency,
25 including, but not limited to, all of the following proposals:

26 (1) The establishment of a means test for persons to qualify for
27 program equipment or free or reduced charges for the use of
28 telecommunication services.

29 (2) If and to the extent not prohibited under Section 401 of the
30 federal Americans with Disabilities Act of 1990 (Public Law
31 101-336), the imposition of limits or other restrictions on maximum
32 usage levels for the relay service, which shall include the
33 development of a program to provide basic communications
34 requirements to all relay users at discounted rates, including
35 discounted toll-call rates, and, for usage in excess of those basic
36 requirements, at rates that recover the full costs of service.

37 (3) More efficient means for obtaining and distributing
38 equipment to qualified subscribers.

39 (4) The establishment of quality standards for increasing the
40 efficiency of the relay system.

(5) Any modification to the program in order to maximize participation and funding opportunity under similar federal programs.

~~(m)~~

(l) The report described in subdivision ~~(t)~~ (k) that is due no later than ~~December 31, 2013~~ *March 1, 2014*, shall evaluate options for controlling the program costs of providing speech-generating devices and include information on any barriers to participation in the program by eligible subscribers.

~~(n)~~

(m) In order to continue to meet the access needs of individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information, the commission shall perform ongoing assessment of, and if appropriate, expand the scope of the program to allow for additional access capability consistent with evolving telecommunications technology.

~~(o)~~

(n) The commission shall structure the programs required by this section so that a charge imposed to promote the goals of universal service reasonably equals the value of the benefits of universal service to contributing entities and their subscribers.

~~(p)~~

(o) (1) The requirement for submitting a report imposed under subdivision ~~(t)~~ (k) is inoperative on January 1, 2021, pursuant to Section 10231.5 of the Government Code.

(2) A report submitted pursuant to subdivision ~~(t)~~ (k) shall be submitted in compliance with Section 9795 of the Government Code.

~~SEC. 2.~~

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

1 ~~SEC. 3.~~

2 *SEC. 4.* This act is an urgency statute necessary for the
3 immediate preservation of the public peace, health, or safety within
4 the meaning of Article IV of the Constitution and shall go into
5 immediate effect. The facts constituting the necessity are:

6 In order to avoid administrative and reporting disruptions with
7 respect to the state's deaf and disabled telecommunications
8 universal service programs, to maintain compliance with federal
9 telecommunications universal service program requirements, and
10 to encourage continued investments in the development and
11 manufacture of technology and software that advances the
12 communications capabilities of the deaf and disabled, it is
13 necessary for this act to take effect immediately.

O